

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL PROPOSED REGULATIONS

Text of amended regulations proposed language for adoption.

Text proposed to be removed from the regulation is in ~~striketrough~~.

Text proposed to be added to the regulation is in underlined italics.

Text removed in the 1st Modification is in ~~double striketrough~~.

Text added in the 1st Modification is in **double underline bold**.

§ 105. Beer Price Posting.

~~(a) The schedule of prices for the sale of beer, as required by Section 25000 of the Alcoholic Beverage Control Act, shall be filed with the department on a form prescribed by the department, in accordance with instructions thereon. All prices filed shall be for immediate delivery. Contract prices for future deliveries of beer and quantity discounts shall not be filed with the department.~~

~~(b) Each manufacturer, importer or wholesaler of beer shall file a price schedule for each county in which his customers have their premises, whether the price which is posted is f.o.b. or delivered, or both. Trading areas within a county must be based on natural geographical differences justifying different prices, and shall not be established for special customers~~

(a) The following definitions shall apply to beer price posting and to the information required as indicated on a schedule, and in Title 4 California Code of Regulation sections 105, 105.1, and 105.2:

- (1) "Schedule" means the listing of beer prices as required by Chapter 12 of the Alcoholic Beverage Control Act, commencing with Business and Professions Code section 25000, and this rule.*
- (2) "Manufacturer" means the actual manufacturer of the beer.*
- (3) "Trade Name" means the name of the beer and shall be the same as the brand name identified on the certificate of label approval on file with the Alcohol and Tobacco Tax and Trade Bureau, or if no certificate of label approval is required to be filed then it shall have the same meaning as if a certificate of label approval was required.*
- (4) "Product Name" means the common identification of the beer and shall be the same as the fanciful name identified on the certificate of label approval on file with the Alcohol and Tobacco Tax and Trade Bureau. If no fanciful name is listed on the certificate of label approval, the product name shall be the same as the trade name, or if no certificate of label approval is required to be filed then it shall have the same meaning as if a certificate of label approval was required.*
 - (i) If the "Trade Name" and the "Product Name" are identical, only the "Product Name" shall be included.*

- (ii) If a line item is a package that contains different beers of more than one trade name or product name in a combination pack, for purposes of identification on the schedule the “product name” shall be the name given to the combination package.
- (5) “Line Item” means the combination of “manufacturer,” “trade name,” “product name,” and “package configuration,” together with the related price and other information recorded on the schedule.
- (6) “Package Configuration” means the specific configuration of the package of beer that is sold as a unit, which may include packages that are also sold as separate units. If a package configuration is identified as containing a specified number of single, or loose, containers, then the package must be physically or stylistically different from a package configuration that comprises the same number of individual containers sold as a unit. For purposes of this provision, “single” or “loose” means that it is intended that the package will be separated at the retailer’s licensed premises and sold to consumers as individual containers **or in other combinations determined by the retailer.**
- (7) “Size” or “Product Size” means the volume of beer in each container and shall also include the type of container used. In the case of a bulk upload of price schedules, “Product Size” shall identify the volume in each container and “Container Type” shall identify the type of container used.
- (8) “Prices To” means manufacturers, wholesalers, retailers, or customers located within a federal enclave.
- (9) “Receiving Method” means either FOB or delivered.
- (10) “FOB” means free on board and is to be used if a customer assumes liability at the seller’s licensed premises.
- (11) “Delivered” means when the selling licensee is delivering purchased beer to a customer’s premises.
- (12) “Price” means the price for the beer to be actually charged to a purchasing customer. Except as otherwise expressly authorized, the price shall include all charges, surcharges, fees, assessments, discounts, and California Redemption Value (CRV), but shall not include any refundable container charge that is separately identified on the schedule for any particular line item.
- (13) “Container Charge” means a refundable deposit that may be assessed for kegs.
- (14) “Posted By” means the licensee that actually establishes prices and posts the schedule.
- (15) “Effective Date” means either immediately or on the tenth day following the submission of the schedule, pursuant to Business and Professions Code section ~~25502~~ **25002**.
- (16) “Status” means that a particular line item is either active, inactive, or old.

- (17) “Trading Area” means a specifically identified area within a county based upon natural geographical differences justifying different prices, as authorized by Business and Professions Code section 25000(a).
- (18) “Competitive Price” means a change to an active price to meet lower filed competing price for the same package configuration, size, county, type of customer, and receiving method in a trade area. For purposes of this provision, “trade area” means a county or trading area within a county. A competitive price shall not be lower than the competitor’s filed price. Competitive prices are effective pursuant to Business and Professions Code section 25002.
- (19) “Price Promotion” or “Price Promotion Program” means a pricing promotion offered by a manufacturer or importer as authorized by Title 4 California Code of Regulations section 105.2.
- (20) “Promotional Item” means an additional item included in a package that is not beer, such as, for example, a glass.
- (b) Schedules of prices for the sale of beer shall be filed only through the department’s online price posting system.
- (c) Except as provided herein, **and as authorized by Title 4 California Code of Regulations section 105.2,** only one line item may be posted by the posting licensee for any single county. If different prices for a line item are permitted for different trading areas, the licensee shall identify the trading area within the schedule.
- (d) If a line item is discontinued or no longer offered for sale by the posting licensee, its status shall be identified as inactive by the posting licensee. This prohibition does not apply to line items that are not currently offered for sale due to being out of stock and which will be offered for sale once the line item is available. No line item may be sold unless its status is active.
- (e) Each manufacturer, importer, wholesaler, or certificate of compliance holder shall file a price schedule for each county in which their customers have their premises. ~~with privileges for the selling or storing of beer~~ **If a customer has premises in multiple counties, prices must be posted for each county in which either the sale, or the delivery, or both the sale and delivery, of beer occurs. If the sale of beer occurs in one county and the delivery of such beer occurs in a different county, the price charged for the beer shall be the price posted for such beer for the county in which the delivery occurs. Prices need not be posted in counties in which a customer has premises but to which beer is neither sold nor delivered by the posting licensee.**
- (f) All prices filed shall be for immediate delivery. Contract prices for future deliveries of beer and quantity discounts are prohibited.
- (g) A licensee may establish different trading areas within a county for sales to retailers based upon natural geographic differences justifying different prices. Upon request by the department, a licensee shall provide information necessary to justify the establishment of different trading areas due to natural geographical differences.

- (1) Natural geographical differences for purposes of establishing separate trade areas may include bodies of water, mountains, or deserts. They do not include manmade structures, barriers, or roads.

Authority: Sections 25000, 25006 and 25750, Business and Professions Code; Section 22, Article XX of the California Constitution.

Reference: Section 25000, 25001, 25002, 25003, 25004, Business and Professions Code.

§ 105.1 Promotional Allowances.

- (a) Depletion allowances, or any agreement or promotion involving depletion allowances, are expressly prohibited. For purposes of this paragraph, a “depletion allowance” is the practice, or any agreement, written or oral, explicit or implicit, by which a seller of beer credits, pays, or reimburses, directly or indirectly, by any means whatsoever, a portion of the price paid by the purchaser based upon the quantity of beer the purchaser sells.
- (b) A manufacturer or importer may offer to wholesalers a price promotion program, in which the manufacturer or importer will reimburse a wholesaler for a portion of a reduction in price by the wholesaler to retailers, and a wholesaler may participate in a price promotion program, only pursuant to the limitations and requirements in Title 4 California Code of Regulations section 105.2. **Participation in any price promotion is solely at the discretion of the wholesaler, which retains independent discretion to set prices for products they sell.**

Authority: Sections 25000, 25006 and 25750, Business and Professions Code; Section 22, Article XX of the California Constitution.

Reference: Section 25000, 25001, 25002, 25003, 25004, Business and Professions Code.

§ 105.2 Authorized Rebates to Wholesalers for Participation in Price Promotion.

- (a) To be a valid price promotion program between a manufacturer or importer and a wholesaler allowing for a manufacturer or importer to reimburse the wholesaler for a reduction in price to retailers over a specific time period, all of the following must be adhered to:
- (1) The manufacturer or importer shall establish either a **lowest** suggested price at which participating wholesalers ~~shall~~ **may** post prices to retailers or a specific **maximum** amount or percentage by which participating wholesalers ~~shall~~ **may** reduce their posted price at which the beer is offered for sale to retailers;
 - (2) The manufacturer or importer shall state the amount of its reimbursement to participating wholesalers as either a specific percentage of the amount by which the wholesaler reduces its posted price to retailers or a specific monetary amount per sale;
 - (i) If the reimbursement is based upon a percentage, the manufacturer or importer may also establish a maximum amount that will be reimbursed per sale;
 - (3) Any price promotion program offered by a manufacturer or importer shall be available **on the same terms to all wholesalers in the county or trading area in which the manufacturer offers the promotion** ~~to which the manufacturer or importer sells the same terms on a state wide basis;~~
 - (i) **No price promotion shall be offered, implemented, or conducted in a manner that affords preferential treatment to any retailer or retailers;**
 - (4) The manufacturer or importer shall provide ~~written~~ notice to all wholesalers to which they sell beer **in the county or trading area in which a price promotion is offered of the specific terms of the price promotion program required under this section. This notice shall be provided to wholesalers at the same time, at least one day prior to the start of a price promotion program. Merely posting the notice to a website shall not be sufficient;**
 - (i) ~~To give wholesalers sufficient time to reduce prices as otherwise required by law, this notice shall be provided at least 15 calendar days prior to the first day on which the price promotion program commences. Merely posting the notice to a website shall not be sufficient;~~
 - (5) A price promotion program written notice shall specify the product name, product size, container type, and package configuration to which the price promotion program applies;
 - (i) A price promotion program notice may include multiple product names, product sizes, or package configurations. However, only one price promotion for any specific combination of product name, product size, and package configuration shall occur during the specified period in which the price promotion program is offered;

- (6) If a wholesaler accepts participation in a manufacturer's or importer's price promotion program it shall adjust its posted prices to retailers in accordance with the terms of the price promotion program in all counties in which it posts its prices;
- (7) When changing its posted price due to an ~~agreement~~ **offered price promotion** pursuant to this section, a wholesaler shall indicate in the designated field within the online price posting system that the posted price for the specific line item has been changed pursuant to a price promotion program. ~~No manufacturer or importer may reimburse a wholesaler if the wholesaler fails to comply with the requirement in this subsection;~~
- (8) A participating wholesaler shall request reimbursement ~~in a written notice to the manufacturer or importer~~ no later than 30 calendar days following the last date of the price promotion program, **this request shall be documented in records required by Title 4 California Code of Regulations section 105.2(a)(10);**
- (i) If the manufacturer or importer verifies participation based on sales data and automated inventory systems, that shall be deemed as a request for reimbursement under this subsection;
- (9) The manufacturer or importer shall pay a participating wholesaler the amount to be reimbursed no later than 30 calendar days following the wholesaler's request for reimbursement;
- (10) Valid records of compliance with all requirements of Title 4 California Code of Regulations section 105.2 must be retained by both the manufacturer or importer and the wholesaler for at least three years following the completion of a transaction. The department may request or inspect these records at any time pursuant to Business and Professions Code section 25753; and
- (11) If a wholesaler in good faith relies upon a price promotion program offered by a manufacturer or importer and changes its posted price in anticipation of a reimbursement, **and otherwise complies with all requirements of wholesalers in this section and under law,** any violation of this section by the manufacturer or importer does not remove a manufacturer's or importer's civil liability for agreed upon reimbursement funds pursuant to the price promotion program.
- (b) For purposes of this section and of determining the commencement of the limitation period pursuant to Business and Professions Code section 24208, the date of the "transaction" shall be deemed to be the last date upon which reimbursement is due or is made pursuant to subsection (9), whichever is later, except that a failure to provide records pertaining to a price promotion program to the department upon request shall be deemed to constitute concealment, tolling the limitation pursuant to Business and Professions Code section 24208.
- (c) **If the manufacturer or importer or wholesaler fail to comply with any of the requirements of this section any reimbursement requested, paid, or accepted constitutes a secret rebate and administrative action may be taken against both licensees involved in an improper price promotion program.**

- (1) **The only exception to Title 4 California Code of Regulations section 105.2(c) is if either licensee notifies the Department of the manufacturer or importer violation and the request, payment, and acceptance is made to discharge liability of the manufacturer or importer pursuant to Title 4 California Code of Regulations section 105.2(a)(11).**

Authority: Sections 25000, 25006 and 25750, Business and Professions Code; Section 22, Article XX of the California Constitution.

Reference: Section 24208, 25000, 25001, 25002, 25003, 25004, 25503 and 25753 Business and Professions Code.